

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 543 OF 2004.

1. Shri Ganapat Surya Naik,
of major in age,
residing at Ward No. 10,
Opposite Maruti Temple,
Vardkhandem, Ponda, Goa.

2. Shri Gurudas alias Gurunath
Surya Naik, married, major in age,
business, residing at Tony Nagar,
Sanvordem, Curchorem, Goa. Petitioners.

Versus

1. Shri Shrihari alias Uday
Rangaji Sinai Kapdi,
married, major in age,
and his wife,

2. Smt. Amita Shrihari Kapdi,
d/o Ramakant Naik Gaunekar,
of major age, housewife/service,
both residing at Heera Niwas,
Opposite Maruti Temple,
Varkhandem, Ponda, Goa. Respondents.

Shri S.S. Kantak with Ms. R.M. Chodankar, Advocates for the Petitioners.

Shri Shivan Dessai, Advocate for the Respondents.

CORAM: R.M. LODHA, J.

DATE: 19th OCTOBER, 2005.

ORAL JUDGMENT:

Rule. Returnable forthwith.

2. By consent Rule is heard finally at this stage.

3. I shall refer to the parties as parties in the suit.

4. From the judgment of the appeal Court it is clear that the suit structure, details of which have been set out in paragraph 7a of the plaint, is owned by the plaintiffs. The said structure is built on the land that belongs to the plaintiffs. The defendants claim to be mundcars in the said structure. However, it is admitted position that as on date the defendants-petitioners have not been declared as mundkars. The question that arises for consideration is: The defendants being in settled possession of the suit structure, was the appeal Court justified in restraining the defendants from remaining in the possession until disposal of the suit.

5. From the averments made in paragraph 7a of the plaint, the inference can be drawn that the plaintiffs are not in possession of the suit structure. According to the plaintiffs the suit structure is not habitable and is lying vacant. The material that was placed by the defendants before the trial Court would show that the defendants are in possession of the suit structure for substantially long period. The settled possession of the defendants could not have been disturbed by the appeal Court at the interim stage. If the impugned order is allowed to stand; it virtually

amounts to the decree of dispossession against the defendants.

6. Taking overall facts and circumstances of the case, I am satisfied that the order passed by the appeal Court needs to be modified.

7. Hence the following Order :-

(i) The Order dated 27.2.2004 passed by the Civil Judge J.D., Ponda is restored subject to the condition that the defendants make monthly payment of Rs.550/- (Rupees five hundred fifty) towards compensation for the use of the suit structure to the respondents through the respondent No.1. The first payment of Rs.550/- for the month of October, 2005 shall be made on or before 10th November, 2005 and for subsequent English Calendar months on or before 10th day of each succeeding month. The payment of Rs.550/- per month shall be made by the petitioners-defendants by account payee Demand Draft/Banker's Cheque/Pay Order in the name of the respondent No.1.

(ii) The default of payment of compensation for consecutive two months shall disentitle the defendants from remaining in possession of the suit structure and it will be open to the plaintiffs to remove the defendants from the suit structure.

(iii) It is made clear that the afore directed arrangement shall not create any right, title, interest in favour of the defendants nor shall influence the mundcarial proceedings, if any.

Rule is disposed of in the aforesaid terms. No costs.

R. M. LODHA, J.

sl.